

OCCUPATIONAL CODE (EXCERPT)

Act 299 of 1980

ARTICLE 6

***** 339.601 THIS SECTION IS AMENDED EFFECTIVE APRIL 4, 2017: See 339.601.amended *****

339.601 Practicing regulated occupation or using designated title without license or registration; operation of barber college, school of cosmetology, or real estate school without license or approval; effect of suspended, revoked, or lapsed license or registration; violation as misdemeanor; penalties; person not licensed as residential builder or residential maintenance and alteration contractor; person not licensed as architect, professional engineer, or professional land surveyor; restitution; injunctive relief; exceptions; "affected person" defined; investigation; forfeiture; remedies; performance of services by interior designer; notice of conviction to department.

Sec. 601. (1) A person shall not engage in or attempt to engage in the practice of an occupation regulated under this act or use a title designated in this act unless the person possesses a license or registration issued by the department for the occupation.

(2) A school, institution, or person shall not operate or attempt to operate a barber college, school of cosmetology, or real estate school unless the school, institution, or person is licensed or approved by the department.

(3) Subject to section 411, a person whose license or registration is suspended, revoked, or lapsed, as determined by the records of the department, is considered unlicensed or unregistered.

(4) Except as otherwise provided for in section 735, a person, school, or institution that violates subsection (1) or (2) is guilty of a misdemeanor, punishable by a fine of not more than \$500.00, or imprisonment for not more than 90 days, or both.

(5) Except as otherwise provided for in section 735, a person, school, or institution that violates subsection (1) or (2) a second or any subsequent time is guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00, or imprisonment for not more than 1 year, or both.

(6) Notwithstanding subsections (4) and (5), a person not licensed under article 24 as a residential builder or a residential maintenance and alteration contractor who violates subsection (1) or (2) is guilty as follows:

(a) In the case of a first offense, a misdemeanor punishable by a fine of not less than \$5,000.00 or more than \$25,000.00, or imprisonment for not more than 1 year, or both.

(b) In the case of a second or subsequent offense, a misdemeanor punishable by a fine of not less than \$5,000.00 or more than \$25,000.00, or imprisonment for not more than 2 years, or both.

(c) In the case of an offense that causes death or serious injury, a felony punishable by a fine of not less than \$5,000.00 or more than \$25,000.00, or imprisonment for not more than 4 years, or both.

(7) Notwithstanding subsections (4) and (5), a person not licensed under article 20 as an architect, professional engineer, or professional land surveyor who violates subsection (1) or (2) is guilty as follows:

(a) In the case of a first offense, a misdemeanor punishable by a fine of not less than \$5,000.00 or more than \$25,000.00 or imprisonment for not more than 93 days, or both.

(b) In the case of a second or subsequent offense, a misdemeanor punishable by a fine of not less than \$5,000.00 or more than \$25,000.00 or imprisonment for not more than 1 year, or both.

(c) In the case of an offense that causes death or serious injury, a felony punishable by a fine of not less than \$5,000.00 or more than \$25,000.00 or imprisonment for not more than 4 years, or both.

(8) Any violation of this act shall include a requirement that restitution be made, based upon proofs submitted to and findings made by the trier of fact as provided by law.

(9) Notwithstanding the existence and pursuit of any other remedy, an affected person may maintain injunctive action to restrain or prevent a person from violating subsection (1) or (2). If successful in obtaining injunctive relief, the affected person shall be entitled to actual costs and attorney fees.

(10) This act does not apply to a person engaging in or practicing the following:

(a) Interior design.

(b) Residential building design. As used in this subdivision, "residential building design" means the rendering of residential design services for a detached 1- and 2-family residence building by a person exempted from the requirements of section 2012.

(c) Any activity for which the person is licensed under the state plumbing act, 2002 PA 733, MCL 338.3511 to 338.3569.

(d) Any activity for which the person is licensed under the Forbes mechanical contractors act, 1984 PA

192, MCL 338.971 to 338.988.

(e) Any activity for which the person is licensed under the electrical administrative act, 1956 PA 217, MCL 338.881 to 338.892.

(11) As used in subsection (9), "affected person" means a person directly affected by the actions of a person suspected of violating subsection (1) or (2) and includes, but is not limited to, a licensee or registrant, a board established pursuant to this act, the department, a person who has utilized the services of the person engaging in or attempting to engage in an occupation regulated under this act or using a title designated by this act without being licensed or registered by the department, or a private association composed primarily of members of the occupation in which the person is engaging in or attempting to engage in or in which the person is using a title designated under this act without being registered or licensed by the department.

(12) An investigation may be conducted under article 5 to enforce this section. A person who violates this section shall be subject to this section and sections 506, 602, and 606.

(13) The department, the attorney general, or a county prosecutor may utilize forfeiture as a remedy in the manner provided for in section 606.

(14) The remedies under this section are independent and cumulative. The use of 1 remedy by a person shall not bar the use of other lawful remedies by that person or the use of a lawful remedy by another person.

(15) An interior designer may perform services in connection with the design of interior spaces including preparation of documents relative to finishes, systems furniture, furnishings, fixtures, equipment, and interior partitions that do not affect the building mechanical, structural, electrical, or fire safety systems.

(16) Upon entering a conviction under subsection (4), (5), or (6), a court entering the conviction shall notify, by mail, facsimile transmission, or electronic mail, the bureau of commercial services at the department.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;—Am. 1994, Act 400, Imd. Eff. Dec. 29, 1994;—Am. 1998, Act 250, Eff. Oct. 1, 1998;—Am. 2005, Act 278, Imd. Eff. Dec. 19, 2005;—Am. 2007, Act 155, Imd. Eff. Dec. 21, 2007;—Am. 2007, Act 157, Imd. Eff. Dec. 21, 2007;—Am. 2008, Act 319, Eff. Mar. 31, 2009.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

Popular name: Act 299

***** 339.601.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 4, 2017 *****

339.601.amended Practicing regulated occupation or using designated title; license or registration required; operation of barber college, school of cosmetology, or real estate school; license or approval required; effect of suspended, revoked, or lapsed license or registration; violation as misdemeanor; penalties; person not licensed as residential builder or residential maintenance and alteration contractor; person not licensed as architect, professional engineer, or professional land surveyor; violation; penalties; restitution; injunctive relief; exceptions; "affected person" defined; investigation; forfeiture; remedies; performance of services by interior designer; notice of conviction to department.

Sec. 601. (1) A person shall not engage in or attempt to engage in the practice of an occupation regulated under this act or use a title designated in this act unless the person possesses a license or registration issued by the department for the occupation.

(2) A school, institution, or person shall not operate or attempt to operate a barber college, school of cosmetology, or real estate school unless the school, institution, or person is licensed or approved by the department.

(3) Subject to section 411, a person whose license or registration is suspended, revoked, or lapsed, as determined by the records of the department, is considered unlicensed or unregistered.

(4) Except as otherwise provided for in section 735, a person, school, or institution that violates subsection (1) or (2) is guilty of a misdemeanor, punishable by a fine of not more than \$500.00, or imprisonment for not more than 90 days, or both.

(5) Except as otherwise provided for in section 735, a person, school, or institution that violates subsection (1) or (2) a second or any subsequent time is guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00, or imprisonment for not more than 1 year, or both.

(6) Notwithstanding subsections (4) and (5), a person that is not licensed under article 24 as a residential builder or a residential maintenance and alteration contractor and that violates subsection (1) or (2) is guilty as follows:

(a) In the case of a first offense, a misdemeanor punishable by a fine of not less than \$5,000.00 or more than \$25,000.00, or imprisonment for not more than 1 year, or both.

(b) In the case of a second or subsequent offense, a misdemeanor punishable by a fine of not less than \$5,000.00 or more than \$25,000.00, or imprisonment for not more than 2 years, or both.

(c) In the case of an offense that causes death or serious injury, a felony punishable by a fine of not less than \$5,000.00 or more than \$25,000.00, or imprisonment for not more than 4 years, or both.

(7) Notwithstanding subsections (4) and (5), a person that is not licensed under article 20 as an architect, professional engineer, or professional land surveyor and that violates subsection (1) or (2) is guilty as follows:

(a) In the case of a first offense, a misdemeanor punishable by a fine of not less than \$5,000.00 or more than \$25,000.00 or imprisonment for not more than 93 days, or both.

(b) In the case of a second or subsequent offense, a misdemeanor punishable by a fine of not less than \$5,000.00 or more than \$25,000.00 or imprisonment for not more than 1 year, or both.

(c) In the case of an offense that causes death or serious injury, a felony punishable by a fine of not less than \$5,000.00 or more than \$25,000.00 or imprisonment for not more than 4 years, or both.

(8) If a trier of fact finds that a person has violated this act, the trier of fact shall require that person to make restitution, based on proofs submitted to and findings made by the trier of fact as provided by law.

(9) Notwithstanding the existence and pursuit of any other remedy, an affected person may maintain injunctive action to restrain or prevent a person from violating subsection (1) or (2). If successful in obtaining injunctive relief, the affected person is entitled to actual costs and attorney fees.

(10) This act does not apply to a person that is engaging in or practicing any of the following:

(a) Interior design.

(b) Residential building design. As used in this subdivision, "residential building design" means the rendering of residential design services for a detached 1- and 2-family residence building by a person that is exempt from the requirements of section 2012.

(c) Any activity for which the person is licensed under article 11 of the skilled trades regulation act, MCL 339.6101 to 339.6133.

(d) Any activity for which the person is licensed under article 8 of the skilled trades regulation act, MCL 339.5801 to 339.5819.

(e) Any activity for which the person is licensed under article 7 of the skilled trades regulation act, MCL 339.5701 to 339.5739.

(11) As used in subsection (9), "affected person" means a person that is directly affected by the actions of a person suspected of violating subsection (1) or (2) and includes, but is not limited to, a licensee or registrant, a board established under this act, the department, a person that utilizes the services of the person that is engaging in or attempting to engage in an occupation that is regulated under this act or using a title that is designated by this act without being licensed or registered by the department, or a private association that is composed primarily of members of the occupation in which the person is engaging in or attempting to engage in or in which the person is using a title designated under this act without being registered or licensed by the department.

(12) An investigation may be conducted under article 5 to enforce this section. A person that violates this section is subject to this section and sections 506, 602, and 606.

(13) The department, the attorney general, or a county prosecutor may utilize forfeiture as a remedy in the manner provided for in section 606.

(14) The remedies under this section are independent and cumulative. The use of 1 remedy by a person does not bar the use of other lawful remedies by that person or the use of a lawful remedy by another person.

(15) An interior designer may perform services in connection with the design of interior spaces including preparation of documents relative to finishes, systems furniture, furnishings, fixtures, equipment, and interior partitions that do not affect the building mechanical, structural, electrical, or fire safety systems.

(16) At the time a court enters a conviction under subsection (4), (5), or (6), the court shall notify, by mail, facsimile transmission, or electronic mail, the department of the conviction.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;—Am. 1994, Act 400, Imd. Eff. Dec. 29, 1994;—Am. 1998, Act 250, Eff. Oct. 1, 1998;—Am. 2005, Act 278, Imd. Eff. Dec. 19, 2005;—Am. 2007, Act 155, Imd. Eff. Dec. 21, 2007;—Am. 2007, Act 157, Imd. Eff. Dec. 21, 2007;—Am. 2008, Act 319, Eff. Mar. 31, 2009;—Am. 2016, Act 412, Eff. Apr. 4, 2017.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

Popular name: Act 299

339.601a Repealed. 2014, Act 193, Imd. Eff. June 24, 2014.

Compiler's note: The repealed section pertained to creation of the advisory subcommittee on interior design.

Popular name: Act 299

339.602 Violation of act, rule, or order; penalties.

Sec. 602. A person, school, or institution that violates this act or a rule or order promulgated or issued under this act shall be assessed 1 or more of the following penalties:

(a) Placement of a limitation on a license or certificate of registration for an occupation regulated under articles 8 to 25.

(b) Suspension of a license or certificate of registration.

(c) Denial of a license, certificate of registration, or renewal of a license or certificate of registration.

(d) Revocation of a license or certificate of registration.

(e) In the case of a person licensed or registered under this act and except as otherwise provided in this act, an administrative fine to be paid to the department of not more than \$10,000.00.

(f) Censure.

(g) Probation.

(h) A requirement that restitution be made, based on proofs submitted to and findings made by the hearing examiner after a contested case.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;—Am. 1981, Act 83, Imd. Eff. July 1, 1981;—Am. 2005, Act 278, Imd. Eff. Dec. 19, 2005;—Am. 2007, Act 155, Imd. Eff. Dec. 21, 2007;—Am. 2007, Act 157, Imd. Eff. Dec. 21, 2007;—Am. 2012, Act 505, Eff. Apr. 1, 2014.

Popular name: Act 299

339.603 Restitution; suspension of license or certificate of registration.

Sec. 603. If restitution is required to be made under section 602, the license or certificate of registration of the person required to make the restitution may be suspended until the restitution is made.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

Popular name: Act 299

339.604 Violation of article regulating occupation or commission of prohibited act; penalties.

Sec. 604. A person who violates 1 or more of the provisions of an article which regulates an occupation or who commits 1 or more of the following shall be subject to the penalties prescribed in section 602:

(a) Practices fraud or deceit in obtaining a license or registration.

(b) Practices fraud, deceit, or dishonesty in practicing an occupation.

(c) Violates a rule of conduct of an occupation.

(d) Demonstrates a lack of good moral character.

(e) Commits an act of gross negligence in practicing an occupation.

(f) Practices false advertising.

(g) Commits an act which demonstrates incompetence.

(h) Violates any other provision of this act or a rule promulgated under this act for which a penalty is not otherwise prescribed.

(i) Fails to comply with a subpoena issued under this act.

(j) Fails to respond to a citation as required by section 555.

(k) Violates or fails to comply with a final order issued by a board, including a stipulation, settlement agreement, or a citation.

(l) Aids or abets another person in the unlicensed practice of an occupation.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;—Am. 1981, Act 83, Imd. Eff. July 1, 1981;—Am. 1989, Act 261, Eff. Jan. 1, 1990;—Am. 2007, Act 155, Imd. Eff. Dec. 21, 2007.

Popular name: Act 299

339.605 Action in name of state; intervention and prosecution by attorney general; action by department; standing.

Sec. 605. (1) The department may bring any appropriate action, including mediation or other alternative dispute resolution, in the name of the people of this state to carry out this act and to enforce this act.

(2) If the attorney general considers it necessary, the attorney general shall intervene in and prosecute all cases arising under this act.

(3) This section does not prohibit the department from bringing any civil, criminal, or administrative action for the enforcement of section 601.

(4) The department has standing to bring an administrative action or to directly bring an action in a court of

competent jurisdiction regarding unlicensed practice of an occupation.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;—Am. 2007, Act 155, Imd. Eff. Dec. 21, 2007;—Am. 2007, Act 157, Imd. Eff. Dec. 21, 2007.

Popular name: Act 299

339.606 Forfeiture.

Sec. 606. The department, the attorney general, and a county prosecutor may utilize the forfeiture provisions of chapter 47 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709, for items seized and determined to be proceeds of a crime, substituted proceeds of a crime, or the instrumentality of a crime as those terms are defined under section 4701 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701.

History: Add. 2007, Act 155, Eff. June 1, 2008.

Popular name: Act 299